

EQUIPMENT LEASE AGREEMENT, dated as of March 12, 1973, between American Fletcher Leasing Corporation an Illinois corporation (hereinafter referred to as "Lessor") and Green Bay and Western Railroad Company a Wisconsin corporation (hereinafter referred to as "Lessee")

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INTERSTATE COMMERCE COMMISSION

WHEREAS Lessor has acquired all right, title and interest in certain railroad equipment (hereinafter called the Hulks) from Berwick Forge Company, a division of Whittaker, Inc. (hereinafter called "Berwick") pursuant to a Hulk Purchase Agreement (hereinafter called the Hulk Purchase Agreement), dated as of March 12, 1973, which Hulks are leased hereunder; and

WHEREAS the Hulks have been or will be delivered to Berwick and the Lessee has agreed with Berwick and the Lessor to cause the Hulks to be rebuilt as required thereby to enable delivery of the items of Equipment specified in Schedule A hereto (hereinafter individually referred to as the "Units" or "Equipment") to be made to the Lessor in accordance herewith; and

WHEREAS the Lessor and the Lessee are entering into this Agreement leasing the Equipment to the Lessee, which Agreement will be filed with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act; and

WHEREAS the Lessor desires to lease the Equipment to Lessee, and Lessee desires to lease the same from Lessor, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein contained, Lessor and Lessee hereby agree as follows:

I. LEASE OF EQUIPMENT

1.1 Lease. Subject to the terms and conditions of this Agreement, Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease

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from Lessor, the Equipment; provided, however, that Lessor shall have no obligation to lease to Lessee any Unit that shall not have been delivered to Lessor by Berwick by, June 30, 1973, or any Unit, if the cost thereof to Lessor when added to the cost to Lessor of Units previously leased hereunder exceeds ^{4855,095}~~\$1,100,000~~. Simultaneously with the delivery of Units to Lessor, or at such time or times following delivery thereof as Lessor may reasonably specify to Lessee, Lessor and Lessee shall enter into a Supplement to Lease Agreement substantially in the form of Schedule B hereto (hereinafter referred to as a "Supplement") which Supplement will identify the Units then being delivered and will confirm that the same have been accepted by Lessee under the terms of this Agreement and have been leased by Lessor to Lessee pursuant to the terms of this Agreement. The determination of how many Units are to be covered by a Supplement shall be made by Lessor in its sole discretion. Each Unit shall be subject to this Agreement immediately upon delivery thereof notwithstanding the fact that a Supplement relating thereto shall not have been entered into until a date subsequent to the date of such delivery. Notwithstanding the delivery of Units to, and their possession and use by, Lessee, Lessor shall and does hereby retain the full legal title to and property in the same, it being expressly understood that this Agreement is an agreement of lease only.

1.2 Term of Lease. The term of lease for each Unit shall commence on the date of delivery thereof (as specified in the Supplement hereto relating to such Unit) and, unless sooner terminated as provided herein, shall terminate on October 30, 1983. This Agreement may not be terminated by Lessor except as expressly provided herein and may not be terminated or cancelled by Lessee for any reason whatsoever, unless

otherwise expressly provided herein. If such term is extended the phrase "term of lease", as used in this Agreement, shall be deemed to include the extended term.

1.3 Rental Payments.

1.3.1 Base Rent. Lessee covenants and agrees to pay to the Lessor (i) one (1) interim rent payment, payable on July 30, 1973 and (ii) as rental for each Unit hereunder forty (40) consecutive quarter-annual payments, each of which shall be payable on October 30, January 31, April 30, and July 30, in each year, commencing October 30, 1973, provided, however, that if any of the payment dates referred to above is not a business day, the payment shall be payable on the next succeeding business day. The interim rent payment shall be in an amount equal to .037989% of the original cost of each Unit (as specified in the Supplement relating to such Unit) subject to the lease for each day elapsed from and including the date each such Unit is delivered to and accepted by the Lessee to and including July 30, 1973. The forty (40) quarterannual payments for each Unit subject to this Lease shall each be in an amount equal to 3.419% of the original cost of each Unit subject to this Lease.

1.3.2 Additional Rent. (a) Loss of Depreciation or Deductions Lessee understands and agrees that the quarterly rental payments provided in subsection 1.3.1 hereof are established on the belief that Lessor will be entitled to use an accelerated method of depreciation and an 11 year life with respect to all of the Equipment for Federal income tax purposes, which among other requirements shall include being the first user of the Equipment (as that term is used in Section 167(c) of the Federal Internal Revenue Code). Accordingly, Lessee agrees that in the event Lessor shall not be entitled to use such accelerated method and/or said 11 year life with respect to any Unit, as a result of any acts or omissions by Lessee and/or as a result of Lessor not being deemed the original user of such Unit, the

rental each quarter for such Unit shall be increased, retroactive to the date of commencement of the term of lease for such Unit, to an amount equal to 3.989 % of the original cost of such Unit, and, in addition, Lessee shall pay to Lessor interest at the rate of 8% per annum on the additional rental applicable to each rental payment previously made, from the date on which such rental payment was payable to the date on which such additional rent is paid.

(b) Loss of Investment Tax Credit. Lessee understands and agrees that the quarterly rental payments provided in subsection 1.3.1 hereof are also established on the assumption that Lessor will be entitled to use the benefits of the 7% investment tax credit allowed by Section 38 of the

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Internal Revenue Code for "new section 38 property" with respect to all of the Equipment for Federal income tax purposes. Accordingly, Lessee agrees that in the event Lessor shall not be entitled to use the benefits of said 7% investment tax credit, with respect to any Unit, as a result of any acts or omissions by Lessee and/or as a result of such Unit not being deemed "new section 38 property" in Lessor's hands, the rental each quarter for said Unit shall be increased, retroactive to the date of commencement of the term of lease for said Unit, to an amount equal to 3.834 % of the original cost of said Unit, and, in addition, Lessee shall pay to Lessor interest at the rate of 8% per annum on the additional rental applicable to each rental payment previously made, from the date on which said rental payment was payable to the date on which said additional rent is paid.

1.3.3 Late Payment. In the event that any rental or other payment hereunder shall not be made promptly when due, Lessee shall pay to Lessor, as additional rental, interest on such overdue payment, from the due date of such payment to the date of payment thereof, at the rate of 10% per annum.

1.3.4 Place of Payment. All rental and other payments required to be made by Lessee to Lessor hereunder shall be made in immediately available funds to Lessor at 100 South Wacker Drive, Chicago, Illinois 60606 or at such other place as Lessor may designate in writing to Lessee.

II. REPRESENTATIONS AND WARRANTIES

2.1 Lessor's Warranties: Disclaimers.

2.1.1 Warranties. Lessor hereby represents and warrants to Lessee that (i) Lessor is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois (ii) Lessor has the right to lease the Equip ment to Lessee in accordance with the terms of this Agreement, (iii) this Agreement has been duly authorized, executed and delivered by Lessor and constitutes the legal, valid and binding obliga-

tion of Lessor in accordance with its terms, and (iv) there are no mortgages, liens, charges or encumbrances on or against the Equipment by, through or under Lessor, except for the rights of Lessee hereunder.

2.1.2 Disclaimers. The warranties set forth in Subsection 2.1.1 hereof are exclusive and in lieu of all other warranties of Lessor whether written, oral or implied; and Lessor shall not, by virtue of having purchased for, and leased the Equipment to, Lessee under this Agreement, or having executed and delivered any bill or bills of sale pursuant to this Agreement, be deemed to have made any representation, warranty, or covenant with respect to the merchantability, fitness, condition, quality, durability or suitability of any said Unit in any respect or in connection with or for the purposes and uses of Lessee, AND LESSOR HEREBY DISCLAIMS ANY OTHER REPRESENTATION OR WARRANTY OF ANY NATURE, EITHER EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATIONS, THE DESIGN OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT OR CONFORMITY OF THE EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDERS RELATING THERETO, IT BEING UNDERSTOOD THAT LESSEE ACCEPTS THE EQUIPMENT "AS IS"; it being agreed, however, that Lessor authorizes Lessee to assert for Lessor's account, during the terms of this Agreement, all of Lessor's rights under any manufacturer's warranty on the Equipment, at Lessee's expense, but Lessee shall indemnify and hold harmless Lessor from and against any and all claims, and all costs, expenses, damages, losses and liabilities incurred or suffered by Lessor in connection therewith, as a result of, or incident to any action by Lessee pursuant to the above authorization.

2.2 Lessee's Warranties. Lessee hereby represents and warrants to Lessor as follows:

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2.2.1 Organization, Corporate Power, etc. Lessee (i) is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation, (ii) is qualified to do business in every jurisdiction in which such qualification is necessary and (iii) has the corporate power and authority to own its properties and to carry on its business as now being conducted and to execute and perform this Agreement.

2.2.2 Validity of Lease. The execution, delivery and performance by Lessee of this Agreement have been duly authorized by all requisite corporate action and will not violate any provision of law, any order of any court or other agency of government, the Certificate or Articles of Incorporation or By-Laws of Lessee, or any indenture, agreement or other instrument to which it is a party, or by which it or any of its property is bound, or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets; and this Agreement constitutes the legal, valid and binding obligation of Lessee in accordance with its terms.

2.2.3 Financial Statements. All balance sheets, statements of profit and loss and other financial data that have been given to Lessor with respect to Lessee (i) are complete and accurate in all material respects, (ii) accurately present the financial condition of Lessee as of the dates, and the results of its operations for the periods, for which the same have been furnished, and (iii) have been prepared in accordance with generally accepted accounting principles consistently followed throughout the periods covered thereby (except as noted therein); all

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balance sheets disclose all known liabilities, direct and contingent, as of their respective dates; and there has been no change in the condition of Lessee, financial or otherwise, since the date of the most recent financial statements given to Lessor with respect to Lessee other than changes in the ordinary course of business, none of which changes has been materially adverse.

2.2.4 Other Information. To the best of Lessee's knowledge and belief, all other written information, reports, papers and data given to Lessor with respect to Lessee are accurate and correct in all material respects and complete insofar as completeness may be necessary to give Lessor a true and accurate knowledge of the subject matter.

2.2.5 Other Agreements. Lessee is not a party to any agreement or instrument materially or adversely affecting its present or proposed business, properties or assets, operation or condition, financial or otherwise; and Lessee is not materially in default in the performance, observance or fulfillment of any obligations, covenants or conditions set forth in any agreement or instrument to which it is a party.

2.2.6 Taxes. Lessee has filed all Federal, State, county and municipal income tax returns required to have been filed by it and has paid all taxes which have become due pursuant to such returns or pursuant to any assessment received by it (except taxes which Lessee is contesting in good faith), and Lessee does not know of any basis for additional assessment in respect of such taxes.

2.2.7 Litigation. There is not now pending against or affecting Lessee, nor to its knowledge is there threatened, any action, suit or proceeding at law or in equity or by or before any administrative agency which if adversely determined would materially impair or affect its financial

condition or operations, except as disclosed in the December 31, 1971 financial statement of Lessee, and except as disclosed by letter to Lessor dated March 12, 1973.

2.2.8 These cars are to be used exclusively in interstate commerce.

III. COVENANTS OF LESSEE

3.1 Payment of Rent and Other Monies. Lessee shall promptly pay Lessor all rental and other payments payable by it under this Agreement without asserting any setoff, counterclaim or other defense for any reason whatsoever.

3.2 Use of Equipment. (a) Lessee shall use and operate the Equipment (i) in a careful and proper manner, (ii) solely in the conduct of its business, or in the business of any parent, subsidiary or affiliated corporation of Lessee to the extent permitted under the provisions of Section 3.9 hereof, (iii) in a manner and for the use contemplated by the manufacturer thereof, and (iv) in compliance with (A) all laws, rules and regulations of every governmental authority having jurisdiction over the Equipment and (B) the provisions of all policies of insurance carried by Lessee pursuant to Section 3.6 hereof. Lessee shall not, without the prior written consent of Lessor, affix or install any part, accessory or devise on any Unit if the same will impair the originally intended function or use of such Unit. Lessee shall pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Equipment. Lessee shall not remove any Unit from the United States, without Lessor's prior written consent.

(b) The Lessee agrees, for the benefit of the Lessor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of

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Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws and rules so long as it is subject to this Lease; provided, however, that the Lessee, upon notice to the Lessor, may, in good faith, contest the validity or application of any such law or rules in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder.

3.3 Maintenance. Lessee shall, at its own cost and expense, maintain, service and repair the Equipment so as to keep it in as good operating condition, order, repair and appearance as it was when it first became subject to this Agreement, ordinary wear and tear excepted. Lessee shall, at its own cost and expense and within a reasonable period of time replace all parts of any Unit that may become worn out, lost, destroyed or otherwise rendered permanently unfit for use with appropriate replacement parts, free and clear from any mortgage, lien, charge or encumbrance (and title thereto shall vest in Lessor immediately upon installation, attachment or incorporation of the same in, on or into such Unit).

3.4 Taxes. In addition to the rentals and other amounts payable by Lessee under this Agreement, Lessee shall pay promptly all taxes, assessments, license fees and governmental charges, municipal, state, and Federal (hereinafter called Imposts):

(a) levied or assessed against Lessee (i) in respect of this Agreement or the purchase orders issued in connection with the purchase of the Equipment, and/or Hulks, (ii) upon the interest of the Lessee in the Equipment, and/or Hulks, (iii) upon the use or operation thereof, or (iv) upon the earnings of Lessee arising therefrom; or

(b) levied or assessed against Lessor (i) on account of the purchase, lease, ownership, possession, maintenance, delivery, or return of the Equipment and/or the Hulks, (ii) on account of or measured by the use or operation thereof, or (iii) on account of or measured by the earnings, rentals or gross receipts arising therefrom, excluding, however, any income taxes payable by Lessor to the United States or any state or political subdivision thereof (except any such tax which is in substitution for, or relieves Lessee from the payment of, any tax or other charge for which Lessee would otherwise be obligated to pay as provided herein), but including any excise, sales, use or similar tax imposed on Lessor, solely on account of the use or sale (except a sale pursuant to subsection 4.3.2 of this Agreement) of the Equipment and/or the Hulks by, to or for the account of Lessee hereunder; provided, however, that Lessee shall not be required to pay any such Impost if and so long as it shall in good faith, with due diligence and by appropriate legal or administrative proceedings contest the validity, applicability or amount thereof. If the claim is made against Lessor for any Impost payable by Lessee hereunder, Lessor shall promptly notify Lessee, and if Lessor pays the same, Lessee will promptly reimburse Lessor therefor. If any Impost payable by Lessee hereunder is, by law, to be assessed or billed to Lessor, Lessee shall, at its expense, do any and all things required to be done by Lessor in connection with the levy, assessment, billing or payment thereof; and Lessor hereby authorizes Lessee to act for and

on behalf of Lessor in connection therewith but Lessee shall indemnify and hold harmless Lessor from and against any and all claims and all costs, expenses, damages, losses and liabilities incurred or suffered by Lessor in connection therewith, as a result of, or incident to, any action by Lessee pursuant to the above authorization. Lessee shall cause all billing of Imposts levied against Lessor to be made to it in care of Lessee, and shall, from time to time, on request of Lessor, submit written evidence of the payment of such Imposts.

3.5 Loss of Equipment

3.5.1 Risk of Loss. Lessee shall bear the risk of the Equipment being lost, destroyed or otherwise rendered permanently unfit or unavailable for use (hereinafter called an Event of Loss) after delivery to and acceptance by Lessee hereunder. For the purposes of this Agreement, a Unit shall be deemed to have been otherwise rendered permanently unfit or unavailable for use, without limiting the general meaning of such phrase, if such items shall have been (i) confiscated, condemned or taken by any governmental body, de facto or de jure, by exercise of the power of eminent domain or otherwise, (ii) damaged to such an extent rendering repair impracticable or uneconomic or (iii) stolen or misappropriated and not recovered by Lessee within 60 days after discovery or notice thereof.

3.5.2 Event of Loss. If an Event of Loss shall occur with respect to any Unit, Lessee shall promptly notify Lessor thereof and shall:

(a) pay to Lessor on or before the 10th day after the first to occur of:

(i) the date on which the 60-day period following the occurrence of such an Event of Loss shall have expired, and

(ii) the date on which there shall be made any payment of any proceeds of insurance or of any condemnation, confiscation or other taking in respect thereof, or the date on

which any underwriter of insurance on the Equipment shall advise Lessor or Lessee that it disclaims liability in respect of such Event of Loss if it disclaims liability, an amount equal to the Stipulated Loss Value of such Unit determined as of the date of payment by Lessee in accordance with Schedule C hereto (to the extent the same has not theretofore been paid to Lessor as the proceeds of insurance or of any condemnation, confiscation or other taking in respect thereof).

In such an event, Lessee shall continue to pay the rental payments applicable to such Unit until the date on which Lessor receives payment in full of the Stipulated Loss Value of such Unit, as provided in clause (a) of this subsection 3.5.2, whereupon Lessee's obligations to pay the same shall terminate except with respect to the rentals accrued (on a daily basis) and unpaid at the date of such termination. The quarterly rental payment applicable to a Unit shall be an amount equal to the product of (i) the total quarterly rental payments to be made under the Supplement relating to such Unit (determined in accordance with the provisions of Section 1.3.1 hereof), and (ii) a fraction (a) the numerator of which is the original cost of such Unit, and (b) the denominator of which is the original cost of all of the Units covered by such Supplement. The original cost of any Unit shall be the cost thereof specified in the Supplement relating thereto.

3.5.3 Disposition of Insurance and Other Proceeds. The proceeds of insurance (except as provided in Section 3.6 hereof) or of any confiscation, condemnation or other taking in respect of a Unit as to which an Event of Loss has occurred shall be paid to and retained by Lessor. Except as provided in Section 3.6 hereof, the proceeds of insurance in respect to damage to a Unit, the repair of which is practicable shall be paid to Lessor and, unless an Event of Default hereunder has occurred and is continuing, shall be applied either to such repair or to the reimbursement of Lessee for the cost

of such repair, at the election of Lessee, after such repair has been made and such Unit has been restored to good operating condition.

3.6 Insurance

3.6.1 Coverage. Lessee will carry with insurers of recognized responsibility:

(a) comprehensive public liability and property damage insurance in respect of the operation and use of the Equipment, in an amount not less than \$ 500,000 for each occurrence.

3.6.2 Policy Provisions. Lessee shall cause each insurance policy issued pursuant to the requirements of subsection 3.6.1 hereof to provide, and the insurer issuing such policy to certify to Lessor, as follows:

(a) as to public liability and property damage insurance, that (i) Lessor, as owner and Lessor of the Equipment, as an additional insured thereunder, (ii) all provisions of such policy, except the limits of liability, will operate in the same manner as if there were a separate policy covering each insured and (iii) if such policy be cancelled or materially changed for any reason whatsoever such insurer will promptly notify Lessor and such cancellation or change will not be effective for 30 days after notice to Lessor.

3.6.3 Delivery of Policies and Receipts for Premiums. Lessee shall deliver to Lessor copies of each such insurance policy (or a certificate of insurance relating thereto) upon the execution hereof and copies of each renewal policy (or a certificate or other evidence of insurance relating thereto) prior to the expiration of the original policy or preceding renewal policy, as the case may be (provided, however, that Lessee shall notify Lessor in writing of the status of such insurance 30 days prior to the expiration thereof in the event it has not then delivered

to Lessor a renewal policy, or a certificate or other evidence of insurance relating thereto), and Lessee shall deliver to Lessor receipts or other evidence that the premiums thereon have been paid if reasonably requested by Lessor.

3.7 Indemnity. Lessee agrees to indemnify and hold harmless Lessor, from and against any and all claims of whatsoever kind and nature accruing during the time of this Agreement, (including but not limited to claims arising out of injury or death to or of persons and damage to property, but excluding claims arising out of the negligence of Lessor), and all costs, expenses, damages, losses and liabilities whatsoever incurred or suffered by Lessor in connection therewith (including fees and expenses of counsel), as a result of, or incident to:

(a) the ownership, management, control, use, operation or storage of the Equipment, or any part thereof;

(b) any defect in the Equipment;

(c) the use in or about the construction or operation of the Equipment of any design, article, or material which infringes, or is claimed to infringe on, any patent or other right; or

(d) the failure to comply with any laws of the jurisdiction in which the Units may be operated, with the interchange rules of the Association of American Railroads or with all lawful rules of the Department of Transportation or the Interstate Commerce Commission or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Hulks or reconstruction thereof or over the Units.

The covenant of indemnity contained in this Section 3.7 shall continue in full force and effect notwithstanding the full payment of all amounts due hereunder or the termination of this Agreement in any manner whatsoever.

3.8 Inspection. Lessee shall permit any person designated by Lessor, at Lessor's expense, to visit and inspect the Equipment, or any part thereof, at such reasonable times and places and as often as Lessor may reasonably request.

3.9 Possession: Assignment: Pledge. Lessee shall not, without the prior written consent of Lessor:

- (a) sublease, hire out or otherwise transfer or part with the possession, control or custody of the Equipment, or any part thereof;
- (b) assign this Agreement or its interests hereunder; or
- (c) create, incur or suffer to exist any mortgage, pledge, lien, encumbrance or charge on, or adverse claim with respect to, the Equipment, or any part thereof, or its interest therein, by, through or under Lessee.

3.10 Identification. Lessee shall, at its own cost and expense, cause each side of each Unit to be legibly, plainly, distinctly, permanently and conspicuously marked in letter not less than one (1) inch in height, with the name of Lessor followed by the words "Owner and Lessor" or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Lessor to such Unit and the rights of Lessor under this Lease. Lessee shall not remove or deface, or permit to be removed or defaced, any such plate, disc or other marking or the identifying manufacturer's serial number with respect to such Unit, and, in the event of any such removal or defacement, Lessee shall promptly cause such plate, disc, other marking or serial number to be replaced. Lessee shall not allow the name of any person, association or corporation to be placed on any Unit in any manner that might be interpreted as a claim of ownership; provided, however, that Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by Lessee on equipment

used by it of the same or a similar type as the Equipment for convenience of identification of its rights to use the Equipment as permitted under this Agreement.

3.11 Equipment to be Personal Property. It is expressly understood that all the Equipment shall be and remain personal property notwithstanding the manner in which the same may be attached or affixed to realty, and Lessee shall do all acts and enter into all agreements necessary to insure that the Equipment remains personal property.

3.12 Financial and Other Statements.

3.12.1 Financial Statements. Lessee shall furnish to Lessor:

(a) within 120 days after the end of each of its fiscal years, a complete conformed copy prepared in accordance with generally accepted accounting principles of an executed report of an examination of its financial affairs, such report to include a balance sheet and a statement of profit and loss for such year in the same detail as hereintofore furnished to Lessor and an unqualified opinion to the effect that such balance sheet and statement of profit and loss fairly represent the financial condition of Lessee and the results of its operations in conformance with generally accepted accounting principles applied on a consistent basis, except as may be described in such opinion.

Any financial statement furnished pursuant to this Section 3.12.1 may be a consolidated statement (i.e., consolidate the financial information with respect to Lessee with that of its consolidated subsidiaries, if any).

IV. DEFAULT AND REMEDIES

4.1 Events of Default. The occurrence of any of the following shall constitute an Event of Default hereunder:

4.1.1 Default in Payment. Lessee shall fail to pay all or any

part of an installment, or rental or other payment hereunder when and as the same shall become due and payable, and shall continue to fail to do so for a period of 10 days after written notice thereof by Lessor to Lessee.

4.1.2 Breach of Warranty. Any representation or warranty made in this Agreement, or in any report, certificate, financial statement or other statement furnished pursuant to the provisions of this Agreement, shall prove to have been false or misleading in any material respect as of the date on which the same was made.

4.1.3 Breach of Covenant. Lessee shall fail to duly observe or perform any covenant, condition or agreement made by it hereunder or under any other agreement between Lessor and Lessee, and shall continue to fail to observe or perform the same for a period of 30 days after written notice thereof by Lessor to Lessee.

4.1.4 Judgment. A Judgment for the payment of monies in excess of \$5,000,000 shall be rendered against Lessee and shall remain undischarged for a period of 30 days during which period execution shall not be effectively stayed.

4.1.5 Attachment. An attachment or other lien against the property of Lessee for an amount in excess of \$5,000,000 shall be issued or entered and shall remain undischarged or unbonded for 30 days.

4.1.6 Bankruptcy, Receivership, Insolvency, etc. Lessee shall commit an act of bankruptcy within the meaning of the Federal Bankruptcy Act; or bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings shall be instituted by or against Lessee or all or any part of its property under the Federal Bankruptcy Act or other law of the United States or of any state or other competent jurisdiction, and, if against Lessee, it shall consent thereto or shall fail to cause the same to be discharged within 30 days.

4.2 Remedies. If an Event of Default hereunder shall occur and be continuing, Lessor may exercise any one or more of the following remedies:

4.2.1 Termination of Agreement. Terminate this Agreement and Lessee's rights hereunder.

4.2.2 Specific Performance or Damages. Proceed, by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Agreement or to recover damages for the breach thereof.

4.2.3 Repossession. Subject always to any mandatory requirements of applicable law then in effect:

(a) personally, or by agents or attorneys, retake possession of the Equipment, or any thereof, from Lessee (and any items in or on the Equipment at the time of repossession, wherever such items may be, which items shall be held in storage for Lessee, at Lessee's expense, without liability on the part of Lessor), with or without notice or process of law, without liability to return to Lessee any rental or other payments theretofore made and free from all claims made by Lessee, and for that purpose Lessor may enter upon Lessee's premises where any of the Equipment is located, remove the same without liability for suit, action or proceeding by Lessee and, use in connection with such removal any and all services, supplies, aids and other facilities of Lessee; or

(b) retake possession of the Equipment, or any Unit thereof, without liability to return to Lessee any rental or other payments theretofore made and free from all claims by Lessee, by directing Lessee in writing to assemble the Equipment and deliver the same to Lessor at Chicago, Illinois, in which event Lessee shall at its own expense forthwith cause the same to be moved to

the place or places designated and there delivered to Lessor; it being understood (i) that Lessee's obligations so to deliver the Equipment is of the essence of this Agreement and that, accordingly, upon application to a court of equity having jurisdiction, Lessor shall be entitled to a decree requiring specific performance by Lessee of such obligations; and (ii) that Lessor may, without charge, pending further action by Lessor as hereinafter in this Article IV provided, keep any of the Equipment repossessed by Lessor pursuant to this clause on the premises of Lessee; provided, however, that if the storage of the Equipment thereon materially interferes with the efficient operation of such premises the Equipment shall be removed to and stored (at the expense of Lessee) at any other location mutually agreed upon by Lessor and Lessee.

(c) without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 4.2.3, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

4.2.4 Other. Exercise any other remedy specifically granted hereunder or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

4.3 Disposition of Equipment. In the event Lessor repossesses the Equipment, Lessor thereafter may (a) lease the Equipment, or any portion thereof, in such manner, for such time and upon such terms as Lessor may

determine, or (b) sell the Equipment, or any portion thereof, at one or more public or private sales, in such manner at such time or times and upon such terms as Lessor may determine.

4.3.1 Lease. In the event that Lessor shall enter into a lease or leases of any Units, the rentals received by Lessor in connection therewith for the Remaining Lease Terms respectively applicable to such Units shall be applied to the payment of (i) any and all expenses and fees (including reasonable attorney's fees) incurred by Lessor in retaking possession of, and removing, storing and leasing such Units, (ii) the costs and expenses incurred by Lessor in repairing the same, (iii) the quarterly rentals then remaining unpaid under this Agreement, and (iv) any and all other sums then owing to Lessor by Lessee hereunder. The remaining balance of such rentals, if any, and the rentals received by Lessor under any lease of any such Unit for the period commencing after the expiration of the Remaining Lease Term applicable to such Unit, shall be retained by Lessor. Lessee shall remain liable to Lessor to the extent that the aggregate amount of the sums referred to in clauses (i) through (iv) above shall exceed the aggregate rentals received by Lessor under such leases for the respective Remaining Lease Terms applicable to the Units covered by such leases. The Remaining Lease Term with respect to any Unit shall mean the period ending on the date on which the term of lease of such Unit under this Agreement would have terminated if an Event of Default hereunder had not occurred.

4.3.2 Sale. In the event that Lessor shall sell or otherwise dispose of (other than pursuant to a lease) any Unit, the proceeds shall be applied to the payment of (i) any and all expenses and fees (including reasonable attorney's fees) incurred by Lessor in retaking possession of, and removing, storing and selling or otherwise disposing of such Unit, (ii) the costs and expenses incurred by Lessor in repairing the same, (iii) the quarterly rentals accrued under this Agreement but unpaid up to

the time of such sale or other disposition (iv) any and all other sums (other than quarterly rentals) then owing to Lessor by Lessee hereunder and (v) the Stipulated Loss Value of the Equipment determined as of the date of such sale or other disposition in accordance with Schedule C attached hereto. The remaining balance of such proceeds, if any, shall be retained by Lessor. Lessee shall remain liable to Lessor to the extent that the aggregate amount of the sums referred to in clauses (i) through (v) above shall exceed the aggregate proceeds received by Lessor in connection with the sale or disposition of the Equipment.

V. PURCHASE OPTION: RETURN OF EQUIPMENT

5.1 Purchase Option. Provided an Event of Default hereunder has not occurred and is continuing, Lessee shall have the option to purchase all, but not less than all, of the Equipment upon the expiration of the respective terms of leases with respect thereto. In the event that Lessee desires to exercise such option, Lessee shall do so by notice in writing to Lessor not less than 90 days prior to the date of expiration of the first term of lease hereunder to expire, specifying the price for which it is offering to purchase all of the Equipment; otherwise such option shall expire. If Lessor accepts such offer, Lessor and Lessee shall consummate such sale immediately upon the expiration of the respective lease terms of the Units. If Lessor rejects such offer, Lessor and Lessee shall then have the fair market value of the Equipment determined by an independent appraiser satisfactory to Lessee and Lessor (or, if Lessee and Lessor are unable to agree upon an appraiser, by a panel of three appraisers, one of whom shall be selected by Lessor, another of whom shall be selected by Lessee and the third of whom shall be selected by the other two, or by the senior judge of the Federal District Court for the Northern District Eastern Division of Illinois, if such other two appraisers are unable to agree upon a third). Following such appraisal, Lessee shall, subject to

the provisions of this Section 5.1, purchase the Equipment for the fair market value (as determined) as provided above. Unless Lessor shall otherwise agree in writing, payment in full of the amounts to be paid to Lessor shall be made, in cash, on or prior to the date such sales are consummated. Lessor and Lessee shall each pay one-half of the cost of any appraisal made pursuant to this Section 5.1.

5.2 Return of Equipment. Lessee shall not have any right to renew or extend the term of Lease of any Unit. Upon the expiration of the term of lease with respect to such Unit, other than pursuant to Article IV hereof, and if Lessee shall not have purchased such Unit pursuant to Section 5.1 hereof, Lessee shall, at its own expense, return such Unit by delivering the same to Lessor at Chicago, Illinois. At the time of such return such Unit shall be free and clear of all liens, encumbrances and rights of others and shall be in as good condition as when delivered to Lessee hereunder, and Lessee shall have paid the cost of any repairs necessary to restore such Unit to such condition, ordinary wear and tear excepted. Thereafter, Lessee shall have no further interest in such Unit, and Lessor may keep such Unit or sell, lease or otherwise dispose of such Unit and collect and retain all proceeds received in connection therewith.

VI. MISCELLANEOUS

6.1 Deleted.

6.2 Performance of Lessee's Obligations. If Lessee shall fail to make payment or perform any act required by this Agreement, Lessor may, but shall not be obligated to, make such payment or perform such act for the account of and at the expense of Lessee, without notice to or demand upon Lessee and without waiving or releasing any obligation or default. Lessee shall indemnify and hold harmless Lessor from and against all losses and

expenses (including, but not limited to, attorney's fees) suffered or incurred by Lessor by reason of any acts performed by it pursuant to this Section 6.2; and Lessee shall pay to Lessor, upon demand, all sums expended by Lessor pursuant to this Section 6.2 or with respect to which it shall be entitled to be indemnified, plus interest thereon, at the rate of 10% per annum, from the date on which such sums are expended by Lessor to the date on which Lessee pays the same to Lessor.

6.3 Further Assurances. Lessee agrees that at any time and from time to time, after the execution and delivery of this Agreement, it shall, upon request of Lessor, execute and deliver such further documents and do such further acts and things as Lessor may reasonably request in order fully to effect the purposes of this Agreement. It is hereby agreed that Lessee will cause this Lease and any assignment hereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. Without limiting the generality of the foregoing, Lessee shall cause this Agreement to be kept, filed and recorded in such places as Lessor may reasonably request in order to perfect and preserve Lessor's rights hereunder.

6.4 Rights, Remedies, Powers. Each and every right, remedy and power granted to Lessor hereunder shall not be exclusive but shall be cumulative and in addition to any other right, remedy or power herein specifically granted or now or hereafter existing in equity, at law, by virtue of statute or otherwise and may be exercised by Lessor from time to time concurrently or independently and as often and in such order as Lessor may deem expedient. Any failure or delay on the part of Lessor in exercising any such right, remedy or power, or abandonment or discontinuance of steps to enforce the same, shall not operate as a waiver thereof or affect Lessor's right thereafter to exercise the same, and any single or partial exercise of any such right, remedy or power shall not preclude

any other or further exercise thereof or the exercise of any other right, remedy or power. In the event Lessor shall have proceeded to enforce any such right, remedy or power and such proceeding shall have been determined adversely to Lessor, then in such event Lessee and Lessor shall be restored to their former positions and the rights, remedies and powers of Lessor shall continue as if no such proceedings had been taken.

6.5 Modification, Waiver, Consent. Any modification or waiver of any provision of this Agreement, or any consent to any departure by Lessee therefrom, shall not be effective in any event unless the same is in writing and signed by Lessor, and then such modification, waiver or consent shall be effective only in the specific instance and for the specific purpose given. Any notice to or demand on Lessee in any event not specifically required of Lessor hereunder shall not entitle Lessee to any other or further notice or demand in the same, similar or other circumstances unless specifically required hereunder.

6.6 Communications. Any notice, request, demand, consent, approval or other communication provided or permitted hereunder shall be in writing and be given by personal delivery or sent by United States first class mail, postage prepaid, addressed as follows:

(a) if to Lessor: American Fletcher Leasing Corporation
100 South Wacker Drive
Chicago, Illinois 60606

(b) if to Lessee: Green Bay and Western Railroad Company
Green Bay, Wisconsin

Attention: Vice President - Operations

provided, however, that either party may change its address for purposes of receipt of any such communication by giving ten (10) days written notice of such change to the other party in the manner above prescribed.

6.7 Section Headings, etc. Section headings are inserted for con-

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venience only and shall not affect any construction or interpretation of this Agreement. All references herein to sections, paragraphs, clauses and other subdivisions of this Agreement; and the words "herein", "hereof", "hereby", "hereunder", and words of similar import refer to this Agreement as a whole and not to any particular section, paragraph, clause or other subdivision hereof.

6.8 Governing Law. This Agreement shall be deemed to have been made under and shall be governed by, the laws of the State of Illinois in all respects, including matters of construction, validity and performance.

6.9 Severability. If any provision of this Agreement is prohibited by, or is unlawful or unenforceable under, any applicable law of any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof; provided, however, that any such prohibition in any jurisdiction shall not invalidate such provision in any other jurisdiction; and provided further, that where the provisions of any such applicable law may be waived, they hereby are waived by Lessee to the full extent permitted by law to the end that this Agreement shall be deemed to be a valid and binding agreement in accordance with its terms.

6.10 Assignment. Lessor, or any assignee of Lessor, may at any time, without notice to or consent by Lessee, sell, assign, transfer or mortgage or otherwise encumber its interest under this Agreement or in the Equipment, subject to the terms of this Agreement and the rights of Lessee hereunder, and upon receipt of written notice of any such assignment, Lessee shall recognize such assignment subject to the rights of Lessee against Lessor hereunder. No assignment or reassignment shall release Lessor from its obligations to Lessee under this Agreement. Lessor agrees to deliver to Lessee a copy of each agreement evidencing any such sale, assignment,

transfer, mortgage or other encumbrance, or the portion thereof which effects compliance with the provisions of this Section 6.10, as soon as practicable after the execution and delivery thereof.

6.11 Use of Equipment Beyond Lease Term. If Lessor permits the use of any Unit beyond the term of lease with respect thereto, the obligations of Lessee hereunder shall continue; provided, however, that such permissive use shall not be construed as a renewal of such term of lease nor as a waiver of any right or continuation of any obligation of Lessor hereunder, and Lessor may take possession of such Unit at any time upon demand.

6.12 Entire Agreement. This Agreement contains the entire agreement between Lessor and Lessee with respect to the subject matter hereof and supersedes and cancels any prior understandings and agreements between Lessor and Lessee with respect thereto.

6.13 Binding Effect. This Agreement, subject to the provisions of Section 3.9 hereof, shall be binding upon and shall inure to the benefit of the respective successors and assigns of Lessee and Lessor.

6.14 Counterparts. This Agreement may be executed in counterparts, and each such counterpart shall, for all purposes, constitute one agreement binding on the parties hereto, notwithstanding that both parties are not signatory in the same counterpart.

IN WITNESS WHEREOF, Lessor and Lessee have executed this EQUIPMENT LEASE AGREEMENT.

Attest:

Laurence B Ward

Green Bay and Western Railroad Company
(LESSEE)

By

[Signature]

Attest:

[Signature]

American Fletcher Leasing Corporation

By

[Signature] (LESSOR)
Vice President

Schedule A

to

Equipment Lease Agreement, Dated as of March 12 , 1973,

between

American Fletcher Leasing Corporation (Lessor)

and

Green Bay and Western Railroad Company (Lessee)

Description of Equipment

The Equipment covered by the Equipment Lease Agreement identified above is as follows:

<u>Quantity</u>	<u>Unit Description</u>	<u>Supplier</u>	<u>Purchase Order No.</u>
75	40'0" Buffalo Creek Box Cars to be reconstructed by Berwick Forge and Fabricating, a Division of Whittaker Corp., in accordance with certain specifications dated January 10, 1973, for Lessee.	Berwick Forge and Fabricating	

SCHEDULE B
SUPPLEMENT NO. ____
to

Handwritten initials: JWM, LBN, and a signature.

Equipment Lease Agreement, dated as of March 12, 1973 ,

between

American Fletcher Leasing Corporation (Lessor)

and

Green Bay and Western Railroad Comapny (Lessee)

Lessee and Lessor have entered into the Equipment Lease Agreement identified above (hereinafter called the Lease) pursuant to which Lessor has agreed to lease unto Lessee, and Lessee has agreed to lease from Lessor, subject to the terms and conditions of the Lease, the Units of property described in Supplements thereto.

NOW, THEREFORE, Lessor and Lessee, by entering into this Supplement to the Lease, hereby confirm and agree as follows:

1. Units. The Units described in Schedule A hereto (hereinafter called the Units) have been delivered and leased by Lessor to Lessee, and have been accepted by Lessee, pursuant to the terms of the Lease.

2. Lease Term.

(a) The date of commencement of the term of lease with respect to the Units is _____, 197__.

(b) The date of termination of such term, subject to the provisions of Section 3.5 and 4.2 of the Lease, is _____, 19__.

3. Rental Payments.

3.1 Base Rent. Lessee covenants and agrees to pay to the Lessor (i) one (1) interim rent payment, payable on July 30, 1973

and (ii) as rental for each Unit hereunder forty (40) consecutive quarter-annual payments, each of which shall be payable on October 30, January 31, April 30, and July 30 in each year, commencing October 30, 1972, provided however, that if any of the payment dates referred to above is not a business day, the payment shall be payable on the next succeeding business day. The interim rent payment shall be in an amount equal to _____ for each day elapsed from and including the date all Units hereunder are delivered to and accepted by the Lessee to and including July 30, 1973. The forty (40) quarterannual payments for all Units hereunder shall each be in an amount equal to _____.

3.2 Additional Rent. (a) Lessee agrees that in the event Lessor shall not be entitled to use an accelerated method of depreciation with respect to all of the Units for Federal income tax purposes, which among other requirements shall include being the first user thereof (as that term is used in Section 167(c) of the Federal Internal Revenue Code), the rental each quarter for each Unit as to which Lessor shall not be entitled to use such method shall be increased, as provided in subsection 1.3.2(a) of the Lease, and, in addition, Lessee shall pay to Lessor interest on the additional rental as provided in subsection 1.3.2(a) of the Lease.

(b) Lessee agrees that in the event Lessor shall not be entitled to use the benefits of the Investment Tax Credit of the Internal Revenue Code for "new section 38 property", with respect to all of the Units, the rental each quarter for each Unit as to which Lessor shall not be entitled to use such benefits shall be increased, as provided in

subsection 1.3.2(b) of the Lease, and, in addition, Lessee shall pay to Lessor interest on the additional rental as provided in subsection 1.3.2(b) of the Lease.

American Fletcher Leasing Corporation (Lessor)

By _____

Green Bay and Western Railroad Company (Lessee)

By _____

Exhibit A to Supplement No. _____
to Lease Agreement, dated as of March 12, 1973,
between American Fletcher Leasing Corporation (Lessor)
and Green Bay and Western Railroad Company (Lessee).

QUANTITY

UNIT DESCRIPTION

ORIGINAL COST
(of each Unit)

The aggregate original cost of the Units described in this Exhibit A
is \$ _____.

Initials _____
Date _____

SCHEDULE C

to

Equipment Lease Agreement, dated as of March 12, 1973,

between

American Fletcher Leasing Corporation (Lessor)

and

Green Bay and Western Railroad Company (Lessee)

STIPULATED LOSS VALUE

The Stipulated Loss Value of a Unit of the Equipment covered by the Equipment Lease Agreement identified above, as of any date, shall be an amount equal to the product of (i) the original cost of such Unit (as specified in the Supplement to such Agreement covering such Unit) and (ii) the percentage indicated below opposite the period of time into which such date falls.

	<u>PERIOD</u>	<u>PERCENTAGE</u>
	Interim Rental Period	100.0
First Period	1	100.0
Second	" 2	99.5
Third	" 3	97.4
Fourth	" 4	89.6
Fifth	" 5	84.4
Sixth	" 6	73.5
Seventh	" 7	65.3
Eighth	" 8	51.3
Ninth	" 9	40.2
Tenth	" 10	28.1
	Thereafter	15.0

After the 10th anniversary of the term of lease for such Unit, and until such time that such Unit has been surrendered to Lessor, as set forth in the Lease, the Stipulated Loss Value of such Unit shall be 15 % of the original cost thereof.

LAW OFFICES
WELSH, TROWBRIDGE, PLANERT & SCHAEFER

ESTABLISHED 1852
SUITE 509 BELLIN BUILDING
P. O. BOX 189

GREEN BAY, WISCONSIN 54305

TELEPHONE 432-5521

RODNEY C. WELSH
FREDERICK N. TROWBRIDGE
LLOYD J. PLANERT
ROBERT W. SCHAEFER
FREDERICK N. TROWBRIDGE, JR.
VANCE M. WAGGONER

Mar. 12, 1973

American Fletcher Leasing Corporation
111 Monument Circle
Indianapolis, Indiana 46204

Attention: Mr. Ramiro M. Collazo,
General Counsel

Dear Sir:

Re: American Fletcher Leasing Corporation --
Green Bay and Western Railroad Company

By way of amplification as concerns paragraph 2.2.7 of the Equipment Lease between the Green Bay and Western Railroad Company and American Fletcher Leasing Corporation, we might state that there is presently pending before the ICC a petition by the Ann Arbor Railway Co. to abandon its entire line of railroad, including all car ferry routes North and West of Thompsonville, Michigan, Docket #AB-49. This would involve removal of the car ferry service presently used by the Green Bay and Western Railroad from Kewaunee, Wisconsin, to Frankfort, Michigan. It could materially affect the operation of the railroad and could affect its financial condition, but in our opinion, would not materially impair either.

Very truly yours,



FNT:mb